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Michael L. Lyons

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NILS PETER MICKELSON
228 WATERMAN ROAD
BUXTON, ME 04093-3718

EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/724,653
Filing Date: December 01, 2003
Appellant(s): LYONS, MICHAEL L.

MAILED
JUL 13 2007
GROUP 3700

Nils Peter Mickelson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/08/2006 appealing from the Office action mailed 06/06/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves only claim 12. Claims 13-22 have not been canceled since the amendment after final rejection filed on 09/05/2006 has not been entered.

(4) Status of Amendments After Final

The amendment after final rejection filed on 09/05/2006 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following ground of rejection are not presented for review on appeal because it have been withdrawn by the examiner: The 112, second paragraph rejection has been withdrawn by the examiner.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

601,922

Wieland

4-1898

The examiner noted that the evidences listed in the Appendix have not been considered since: 1) none of the evidences on the evidence appendix was not provide with an IDS form for each of the Exhibit in the Evidence Appendix, as required by the MPEP, 2) there are evidences that is submitted after the Final rejection that were not accompanied by an IDS form, 3) the examiner raises this issue in the Notification of Non-Compliant Appeal Brief dated 03/14/2007. However, in the response dated 03/23/07, applicant failed to comply with the issues raised by Examiner.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

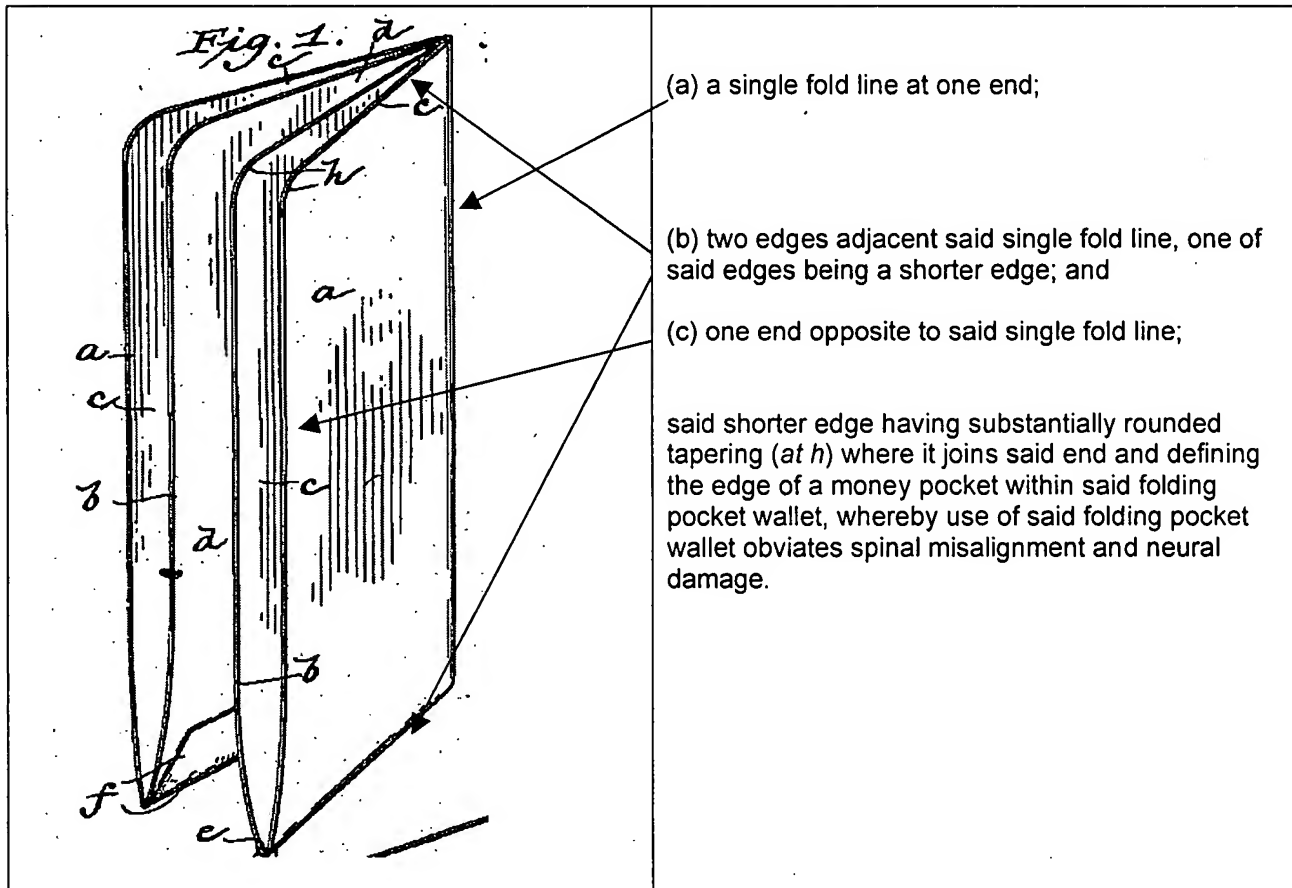
1. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not support the **single fold line** at one end. The examiner submits that the multiple layers would form multiple fold lines at portion 11. This is a new matter rejection.

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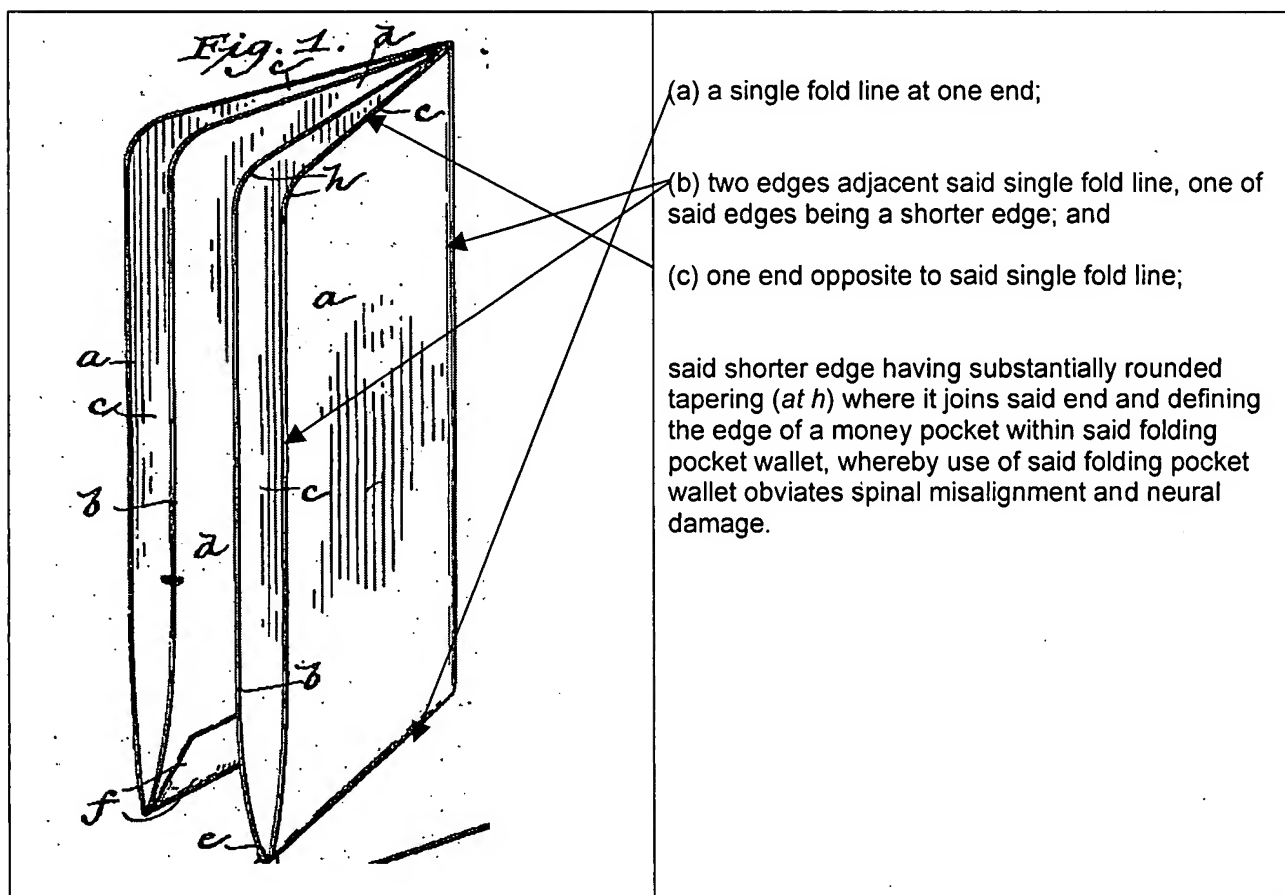
2. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Wieland (601922).

The examiner would like to present 3 interpretations on Wieland as followed:

Interpretation 1 of Wieland:



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Interpretation 2 of Wieland:**Interpretation 3 of Wieland:**

In another interpretation, Fig. 1 in Wieland shows two compartment portions folded upon another forming the final pocket, each compartment portion comprises of portion "a" and portion "b" (note that there are two portions "a" and two portions "b"), each portion meet the claimed

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limitation of “a single fold line” as claimed. Note that the term “comprising” does not limit other structures in the device of Wieland.

With respect to the wallet obviates spinal misalignment, note that it is an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

(10) Response to Argument

Applicant arguments have been considered but they are not persuasive.

With respect to 112, 1st rejection, applicant asserts that the single fold line is taught by the specification. The examiner noted that the specification did not recite “single fold line” as set forth in the new claim 12. The specification recites, “closed configuration folded at fold line 11”. As shown in the drawings, the wallet has multiple layers; the folding at 11 has numerous overlapping fold lines at 11. Thus, the recitation “a single fold line” in the new claim 12 imparts different meaning into the disclosure since the recitation “a single fold line” is referred to as “only one fold line” which is not the invention as originally disclosed. Applicant asserts that the term “fold line” refers to as “the place or line where the wallet is folded”. The examiner submits that this interpretation of “fold line” is not consistent with the disclosure. The term “fold line” is generally recognized as a line where the folding of two planar portions. In this case, there are multiple planar portions as disclosed thus creating multiple fold lines.

With respect to the 102 rejections, applicant asserts that Wieland fails to teach the single fold lines. The examiner submits that according to the first interpretation of Wieland, “the fold

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line” as noted by the Examiner is the same as applicant’s interpretation of a fold line. Applicant also asserts that applicant’s wallet is folded once. The examiner submits that nowhere in the claim where “folded once” can be found.

Applicant further asserts that the round corner at “h” in Wieland is not the same as applicant’s “rounded tapering” and that applicant’s invention is made from die-cut corners. The examiner submits that the round corner at “h” meets the claimed structure of applicant’s “rounded tapering”. The examiner submits that the patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113.

Applicant further asserts that the term “substantial” is defined as half the entire width of the wallet. The claim recites “substantially rounded tapering” should be interpreted as a “substantially rounded” as compared to a “substantially straight”. The specificities with respect to the size of the rounded tapering portion are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further asserts that the applicant’s wallet is stitched at the end, the examiner submits that this limitation is not recited in the rejected claim.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tri Mai



Conferees:



Marc Amenez, Anthony Stashick (SPE), Tri Mai

ANTHONY D. STASHICK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700